

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

FRESNO UNIFIED SCHOOL DISTRICT.

OAH Case No. 2014110763

ORDER GRANTING MOTION TO  
UNEXPEDITE HEARING AND  
DISMISSING ISSUE 4 OF STUDENT'S  
COMPLAINT

On November 12, 2014, Student filed a Due Process Hearing Request (complaint) with the Office of Administrative Hearings naming Fresno Unified School District. Issue 4 of the complaint alleged violations of the Individuals with Disabilities Education Act that required OAH to expedite the hearing on the claims raised in Issue 4. Student did not request an expedited hearing in the complaint.

On November 24, 2014, OAH issued a Scheduling Order and Notice of Dual Hearing Dates Including Expedited Hearing (Scheduling Order). The Scheduling Order set this matter for expedited hearing on December 16-18, 2014, and for a non-expedited hearing on January 7, 2015.

On December 1, 2014, Student filed a motion to dismiss Issue 4 of the complaint and vacate the expedited hearing dates. District filed a non-opposition to the motion on December 3, 2014.

APPLICABLE LAW

A parent of a child with a disability who disagrees with any decision by a school district regarding a change in educational placement of the child based upon a violation of a code of student conduct, or who disagrees with a manifestation determination made by the district, may request and is entitled to receive an expedited due process hearing. (20 U.S.C. § 1415(k)(3)(A); 34 C.F.R. § 300.532(a) (2006).) An expedited due process hearing before OAH must occur within 20 school days of the date the complaint requesting the hearing is filed. (20 U.S.C. § 1415(k)(4)(B); 34 C.F.R. § 300.532(c)(2) (2006).) The procedural right to an expedited due process hearing is mandatory and does not authorize OAH to make exceptions or grant continuances of expedited matters. (*Ibid.*) In sum, a matter can only be unexpedited or continued if no issue is alleged that is subject to an expedited hearing, or if the student withdraws the issues in the complaint that triggered the expedited hearing.

## DISCUSSION

Issue 4 of Student's complaint alleges that District changed Student's placement by suspending him from school, without giving Parents prior written notice, on more than 10 school days during a two month period, which Student alleges was a violation of title 34 Code of Federal Regulations section 300.536(a). As stated above, OAH determined that the change of placement alleged in Issue 4 required an expedited hearing under title 20 United States Code section 1415(k) and therefore the matter was set for dual hearings.

Student's attorney stated in his request for dismissal of Issue 4 that based on additional documentation received from District, the necessity of an expedited hearing was moot. He requested that Issue 4 be dismissed without prejudice and all expedited dates be vacated. District does not oppose the dismissal of Issue 4.

Student has withdrawn Issue 4 from the complaint that is subject to an expedited due process hearing. Accordingly, the expedited hearing dates will be vacated.

## ORDER

1. The motion to dismiss Issue 4 of Student's complaint is granted and the request to vacate all scheduled dates in the expedited portion of the case is granted.
2. The following expedited dates are vacated: Expedited Mediation on December 4, 2014, Expedited Prehearing Conference on December 8, 2014 and Expedited Hearing on December 16-18, 2014.
3. The dates set for the remaining claims in the complaint as set forth in the November 24, 2014 Scheduling Order are confirmed.

DATE: December 4, 2014

/s/

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ADRIENNE L. KRIKORIAN  
Administrative Law Judge  
Office of Administrative Hearings